HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.494 of 2007
Date of decision : 20.02.2007

Karambir **.....Appellant**

versus

Smt.Parkash Malik and another **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.R.D.Gupta, Advocate for the appellant.

* * *

ORDER

HEMANT GUPTA, J.

The defendant No1. is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for recovery of Rs.77,350/- was decreed.

It is the case of the plaintiff that defendant No.1 in January, 1997 desired to purchase a car and told the plaintiff that he has negotiated the same with defendant No.2. It was pleaded that defendant No.1 has told the plaintiff that sufficient amount for purchasing the car is not available with him and if the plaintiff pays the substantial amount, the said car will be registered in the name of the plaintiff. As and when the defendant No.1 makes the entire payment, the registration of the car will be transferred in the name of defendant No.1. In pursuance of such arrangement, a sum of Rs.70,000/- was paid by the plaintiff to defendant No.1, the present appellant, vide cheque dated 28.1.1997, in the name of defendant No.2. The said cheque was encashed by defendant No.2 on

29.1.1997. The plaintiff came to know that the car has been transferred in the name of defendant No.1 though it was required to be transferred in the name of the plaintiff. In view of the said fact, the plaintiff sought to recover the said amount of Rs.70,000/- by filing the present suit.

It has been found that the above mentioned vehicle was sold to Joginder Kumar Gaba, defendant No.2 on 25.12.1995 for a sum of Rs.1,25,000/-. Subsequently, the plaintiff paid a sum of Rs.70,000/- vide cheque dated 28.1.1997 in the name of defendant No.2 which cheque was encashed on 29.1.1997. The balance amount of Rs.55000/- was paid by defendant No.1, but the registration of the Car was got transferred in the name of Sher Singh, father of defendant No.1, though it was agreed that the Car would be transferred in the name of the plaintiff. It has been found that the appellant has stated in his written statement that he purchased the said Car from Natha Ram son of Khubi Ram for a sum of Rs.1,25,000/- and the bargain was matured through the plaintiff. The Court found that role of the plaintiff has not been explained by the appellant. Still further, he has deposed that his father has made the payment of the Car after withdrawing Rs.1,70,000/- from his funds. But the said evidence is beyond the pleadings. Thus, the Court found that the stand of defendant No.1 is not tenable and consequently decreed the suit.

Learned counsel for the appellant has vehemently argued that the affidavit Exhibit D-3 regarding transfer of the vehicle is executed by Attar Chand as partner of the firm M/s Natha Ram Khubi Ram. The said argument is factually incorrect. Exhibit D-3, an affidavit for transfer of the vehicle dated 1.10.1997 is on behalf of Natha Ram. The said affidavit is attested on the basis of identification of Natha Ram by one Zile Singh.

It is concurrent finding of fact recorded by the Courts below that a sum of Rs.70,000/- was advanced by the plaintiff to defendant No.1 for purchase of the Car. Therefore, the plaintiff is entitled to recover the suit amount. The said finding is sought to be disputed by re-appreciation of evidence. In second appeal, the defendant cannot be permitted to re-appreciate the evidence. It could not be pointed out that any evidence has been misread or not taken into consideration while returning a finding of facts.

I do not find any illegality or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

February 20, 2007
**mohinder*